

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PATRICK DURAY PORTLEY-EL,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-08-160-D
)	
MARY BLEVINS,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION
ON REQUESTS FOR A DEFAULT JUDGMENT

Mr. Portley-El filed two requests for a default judgment. Both requests should be denied.

Mr. Portley-El filed a complaint in state court on January 28, 2008.¹ The docket sheet does not reflect service on the Defendant,² and the Plaintiff acknowledges³ that he did not personally serve Ms. Blevins.⁴ Instead, the Defendant removed the action to this Court⁵ and

¹ See Civil Complaint, *Portley-El v. Blevins*, Case No. CJ-08-15 (Beckham Co. Dist. Ct. Jan. 28, 2008).

² Petition for a Default Judgment, Exh. A (July 28, 2008); *see also* Defendant's Response to Plaintiff's Motion for Default Judgment, Exh. 1 at pp. 1-2 (Aug. 12, 2008).

³ See Petition for a Default Judgment at p. 2 (July 28, 2008) (explaining that Mr. Portley-El had no information concerning who had served Ms. Blevins or when she had been served).

⁴ Ms. Blevins admits actual notice of the petition as early as January 28, 2008. See Notice and Petition of Removal at p. 1 (Feb. 15, 2008). But to be valid, service of process must substantially comply with Oklahoma's service statute. See *Hukill v. Oklahoma Native American Domestic Violence Coalition*, 542 F.3d 794, 798 (10th Cir. 2008). Actual notice is insufficient to show substantial compliance. See *id.* at 802 (reversing the denial of a motion to vacate a default judgment when the district court had relied in part on the defendants' actual notice of the petition to find

filed appearances by counsel on February 15, 2008.⁶ These appearances were equivalent to service.⁷ Thus, Ms. Blevins had until March 6, 2008, to respond,⁸ and she did so on February 25, 2008.⁹ That response preceded the deadline by ten days. In these circumstances, the Court should deny Mr. Portley-El's requests for a default judgment (Docs. 17-18).

The Plaintiff has the right to object to this report and recommendation. The deadline for objections is February 2, 2009.¹⁰ The failure to timely object would foreclose appellate review of the suggested rulings.¹¹

The referral is not terminated.

substantial compliance with Oklahoma service requirements).

⁵ See Notice and Petition of Removal (Feb. 15, 2008).

⁶ See Entry of Appearance (Stephen L. Geries) (Feb. 15, 2008); Entry of Appearance (Chris J. Collins) (Feb. 15, 2008); Entry of Appearance (Eric D. Cotton) (Feb. 15, 2008).

⁷ Okla. Stat. tit. 12 § 2004(C)(5) (2002 supp.) ("the voluntary appearance of a defendant is equivalent to service"); see also *Bumgarner v. Federal Deposit Ins. Corp.*, 764 P.2d 1367, 1369 (Okla. 1988) (stating that a party whose attorney makes a "general appearance" is subject to the jurisdiction of the court "irrespective of service of process" (citation omitted)).

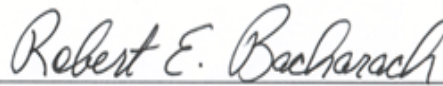
⁸ See Fed. R. Civ. P. 81(c)(2)(B).

⁹ See Defendant's Answer to Civil Complaint (Feb. 25, 2008).

¹⁰ See W.D. Okla. LCvR 72.1.

¹¹ See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); see also *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

Entered this 12th day of January, 2009.

A handwritten signature in cursive script, reading "Robert E. Bacharach". The signature is written in dark ink and is positioned above a horizontal line.

Robert E. Bacharach
United States Magistrate Judge